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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
 SANDRA D. KENNEDY
 JUSTIN OLSON
 ANNA TOVAR
 JIM O'CONNOR

Arizona Corporation Commission

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In the matter of)

) DOCKET NO. S-21104A-20-0103

) Cornerstone Wealth Management, LLC, an
) Arizona limited liability company,

) DECISION NO. 78219

) Nathaniel S. Barnhart (CRD # 1898299) and
) Lisa Renee Wilson Barnhart, husband and
) wife,

) **ORDER TO CEASE AND DESIST, ORDER**
) **FOR RESTITUTION, ORDER FOR**
) **ADMINISTRATIVE PENALTIES AND**
) **CONSENT TO SAME**

) AE Wealth Management, LLC (CRD #
) 282580), a Kansas limited liability company,

) **BY: RESPONDENT AE WEALTH**
) **MANAGEMENT, LLC**

) David James Callanan (CRD # 4237166), a
) resident of Kansas,

) **ORDER TO DISMISS WITH PREJUDICE RE:**
) **FORMER RESPONDENT DAVID JAMES**
) **CALLANAN**

) Christopher Spence Cox (CRD # 5639015)
) and Beth Cox, husband and wife,

) William Andrew Smith (CRD # 5638821) and
) Kimberly Ann Smith, husband and wife,

) Smith & Cox, LLC (CRD # 149088) an
) Arizona limited liability company,

) Respondents.

Respondent AE Wealth Management, LLC (CRD # 282580) ("AE Wealth" or "Respondent") elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") and Articles 7 and 8 of the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("Investment Management Act") with respect to this Order To Cease And Desist, Order For Restitution, Order For Administrative Penalties And Consent To Same ("Order"). AE Wealth admits the jurisdiction of the Arizona Corporation Commission ("Commission"); admits only for purposes of this proceeding and any other

proceeding in which the Commission is a party the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

A. Respondents

1. AE Wealth is a Kansas limited liability company with its principal place of business in Topeka, Kansas. On February 17, 2016, AE Wealth became registered as an investment adviser with the United States Securities and Exchange Commission. AE Wealth subsequently made a notice filing with the Commission under A.R.S. § 44-3153(E) to transact business in Arizona as a federal covered investment adviser.

2. Since March 30, 2018, David James Callanan ("Callanan") (CRD # 4237166) has been the Chief Executive Officer ("CEO") of AE Wealth. From February 17, 2016, until March 30, 2018, when he became the CEO, Callanan was the President of AE Wealth.

3. On February 24, 2021, Callanan was named as a Respondent to this action. In connection with AE Wealth's consent to the entry of this Order, on April 15, 2021, Callanan was dismissed without prejudice from this action.

4. Respondent Nathaniel S. Barnhart ("Barnhart" or "Nate Barnhart") (CRD # 1898299) was licensed by the Commission as an investment adviser representative for AE Wealth Management, LLC from October 11, 2019, until September 30, 2020. Prior to October 11, 2019, Barnhart was licensed by the Commission as an investment adviser representative for Secure Investment Management, LLC, and as a salesman for several securities dealers.

5. Respondent Cornerstone Wealth Management, LLC ("Cornerstone") was organized on July 3, 2019, as a member-managed Arizona limited liability company. Barnhart is the sole member of Cornerstone.

6. From October 24, 1997, until October 1, 2002, Respondent Christopher Spence Cox ("Cox" or "Chris Cox") (CRD # 5639015) was a licensed securities salesman in South Dakota,

1 Nebraska, Colorado, Minnesota and Iowa. Since September 21, 2007, Cox has been a licensed
2 Arizona insurance producer (License #718551).

3 7. From July 13, 2009, until October 2, 2020, Respondent William Andrew Smith
4 (“Smith” or “Andy Smith”) (CRD # 5638821) was licensed by the Commission as an investment
5 adviser representative. On October 2, 2020, in Decision No. 77747, the Commission revoked Smith’s
6 license.

7 8. Respondent Smith & Cox, LLC (“Smith & Cox”) (CRD # 149088) was organized on
8 January 15, 2009, as an Arizona limited liability company. From July 13, 2009, until October 2, 2020,
9 Smith & Cox was licensed by the Commission as an investment adviser. On October 2, 2020, in
10 Decision No. 77747, the Commission revoked Smith & Cox’s license.

11 9. AE Wealth, Barnhart, Cornerstone, Cox, Smith and Smith & Cox may be referred to
12 collectively as “Respondents.”

13 **B. Factual Overview**

14 10. As investment advisory firms and representatives of those firms, Respondents were
15 fiduciaries of their joint clients, the overwhelming majority of whom are senior citizens and retirees.
16 *See, e.g., S.E.C. v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191 (1963) (“The Investment
17 Advisers Act of 1940 thus reflects a congressional recognition of the delicate fiduciary nature of an
18 investment advisory relationship....”) (internal quotation omitted).

19 11. As fiduciaries, Respondents owed their clients “an affirmative duty of utmost good
20 faith, and full and fair disclosure of all material facts....” *Capital Gains Research*, 375 U.S. at 194
21 (internal quotation omitted).

22 12. Respondents breached their fiduciary duties by failing to disclose and concealing,
23 through misleading half-truths, facts that raised serious questions about their competence, judgment
24 and integrity, and thus their fitness to serve as investment advisers. These facts included:

25 a) Smith still has an unpaid judgment from 2006 against him by an investor for
26 selling her an unregistered security.

1 b) Smith is the subject of three unsatisfied liens the Internal Revenue Service
2 recorded against him for over \$178,000 in unpaid taxes from 2007, 2008, 2009 and 2014.

3 c) In March 2018, the Division filed an enforcement action against Smith, Cox
4 and Smith & Cox for securities fraud, investment advisory fraud, and revocation of Smith's and
5 Smith & Cox investment adviser licenses. (On October 2, 2020, the Commission found Smith, Cox
6 and Smith & Cox liable for these violations, ordered them to pay \$2.57 million in restitution and
7 \$252,000 in administrative penalties, and revoked Smith's and Smith & Cox investment adviser
8 licenses.)

9 d) In September 2019, AE Wealth learned of the then-pending enforcement
10 action, and that Smith, Cox and Smith & Cox had concealed it from AE Wealth in material breach
11 of their agreement as co-investment advisers.

12 13. Instead of terminating its relationship with Smith, Cox and Smith & Cox and
13 disclosing these material facts to their joint clients, AE Wealth deceived the clients and allowed
14 Smith and Smith & Cox to continue to act for eight (8) more months as the clients' investment
15 advisers. With AE Wealth's consent, Smith, Barnhart and Cox told investors misleading half-truths
16 that Smith & Cox was "rebranding" itself to Cornerstone and Barnhart was joining the firm to
17 become the clients' investment adviser representative because the firm was growing, while failing
18 to disclose that Smith and Smith & Cox expected the Commission to revoke their licenses and that
19 AE Wealth had decided to terminate its relationship with Smith and Smith & Cox because of their
20 dishonesty in concealing this information from AE Wealth.

21 14. By concealing these material facts from its clients, AE Wealth committed investment
22 advisory fraud in violation of A.R.S. § 44-3241(A)(2).

23 C. **Smith's 2006 Unpaid \$93,455 Judgment and the I.R.S.'s 2013, 2015, 2016 and**
24 **2017 Liens Against Smith for Unpaid Taxes.**

25 15. Prior to moving to Arizona in July 2007, Smith was an insurance salesman in Indiana.
26

1 16. On August 15, 2006, the Indiana Commissioner of Insurance initiated an investigation
2 of Smith for his sale of universal leases as unregistered securities.

3 17. On November 30, 2006, an investor was awarded a \$93,455 Judgment against Smith
4 for selling her a universal lease as an unregistered security.

5 18. Smith has never fully paid and satisfied the \$93,455 Judgment, which is referred to
6 herein as "the 2006 Unpaid Judgment."

7 19. On August 21, 2008, the Indiana Commissioner of Insurance disciplined Smith for
8 selling universal leases as unregistered securities.

9 20. On January 15, 2009, Andy Smith and Chris Cox organized Smith & Cox, LLC with
10 themselves as the two managing-members.

11 21. On January 29, 2009, Andy Smith, on behalf of Smith & Cox, filed with the Division
12 a Form ADV uniform application for Smith & Cox to become an Arizona-licensed investment
13 adviser, and a Form U4 uniform application for Andy Smith to become an Arizona-licensed
14 investment adviser representative.

15 22. Form ADV asks for information about the firm and its advisory affiliates, who include
16 the firm's officers, partners or directors, and all persons who directly or indirectly control the firm.

17 23. As the managing member of Smith & Cox, LLC and its chief compliance officer,
18 Andy Smith has at all times been an advisory affiliate of Smith & Cox, LLC.

19 24. Form ADV states: "We use this information to determine whether to grant your
20 application for registration, to decide whether to revoke your registration or to place limitations on
21 your activities as an investment adviser...."

22 25. Form U4 is filed with the Division by an applicant seeking to become licensed as an
23 investment adviser representative. The Division reviews Form U4 in deciding whether to grant an
24 applicant's license and whether to seek to suspend or revoke an investment adviser representative's
25 license.

26

1 26. The Form U4 Andy Smith and Smith & Cox filed on January 29, 2009, asked: "Do
2 you have any unsatisfied judgments or liens against you?" Andy Smith and Smith & Cox answered
3 "No."

4 27. That answer was false, inaccurate and misleading because Andy Smith has never
5 satisfied the 2006 \$93,455 Judgment he owes to an investor in Indiana.

6 28. The Form U4 filed on January 29, 2009, required Andy Smith and Smith & Cox to
7 "agree to update this form by causing an amendment to be filed on a timely basis whenever changes
8 occur to answers previously reported." Similarly, the Form ADV Andy Smith and Smith & Cox
9 filed that date directed: "You must keep this form updated by filing periodic amendments."

10 29. On July 13, 2009, the Division approved Smith & Cox's and Andy Smith's
11 applications, and they became licensed as an investment adviser ("IA") and an investment adviser
12 representative ("IAR"), respectively.

13 30. Pursuant to the IM Act, to retain their licenses, Andy Smith and Smith & Cox were
14 required to file "A supplemental statement showing any material changes in the facts contained in the
15 original application for licensure as supplemented or amended as the changes occur or within thirty
16 days after the change." A.R.S. § 44-3159(A)(1).

17 31. On June 23, 2009, and again on July 25, 2011, Andy Smith, on behalf of Smith &
18 Cox filed Amendments to his Form U4. The U4 Amendments both asked: "Do you have any
19 unsatisfied judgments or liens against you?" Each time, Andy Smith and Smith & Cox answered
20 "No." Those answers were false, inaccurate and misleading because Andy Smith has never satisfied
21 the 2006 Unpaid Judgment he owes to an investor.

22 32. Andy Smith and Smith & Cox have never amended Smith's Form U4 to disclose the
23 2006 Unpaid Judgment, which A.R.S. § 44-3159 required them to do.

24 33. On June 25, 2013, the Internal Review Service ("I.R.S.") recorded a Notice of Federal
25 Tax Lien in Pima County, Arizona against Andy Smith for \$125,079 in unpaid income taxes from
26 2007 and 2008 ("the 2013 I.R.S. Lien").

1 34. Smith has never satisfied the 2013 I.R.S. Lien.

2 35. On September 22, 2015, the I.R.S. recorded another lien against Andy Smith for
3 \$4,766 in unpaid income taxes from 2013 (“the 2015 I.R.S. Lien”).

4 36. On August 2, 2016, the I.R.S. recorded another lien against Andy Smith for \$9,594
5 in unpaid income taxes from 2014 (“the 2016 I.R.S. Lien”). Smith has never satisfied that \$9,594
6 lien.

7 37. On August 29, 2017, the I.R.S. recorded a release of the 2015 I.R.S. Lien against
8 Andy Smith for \$4,766.

9 38. Also on August 29, 2017, the I.R.S. recorded another lien against Andy Smith for
10 \$43,602 in unpaid income taxes from 2009 (“the 2017 I.R.S. Lien”). Smith has never satisfied that
11 \$43,602 lien.

12 39. The I.R.S.’s 2013, 2016 and 2017 Liens against Smith collectively total \$178,275.

13
14 **D. September to November 2016: AE Wealth and Smith & Cox Agree to Become
Co-Investment Advisers.**

15 40. In September 2016, AE Wealth and Smith & Cox began taking steps to affiliate with
16 each other in order to serve as co-investment advisers for Smith & Cox’s clients.

17 41. On September 16, 2016, Andy Smith completed an AE Wealth “Independent
18 Registered Investment Adviser Onboarding Questionnaire” regarding Smith & Cox. Smith stated
19 that Smith & Cox served as an investment adviser for approximately 100 households and had assets
20 under management of \$25 million.

21 42. On September 26, 2016, AE Wealth engaged a third-party contractor to conduct a
22 background check on Andy Smith. On September 29, 2016, AE Wealth received the background
23 report.

24 43. The background check report showed Smith’s 2013 I.R.S. Lien for \$125,079 and his
25 2015 I.R.S. Lien for \$4,766. The background check report did not show his 2016 I.R.S. Lien for
26 \$9,594.

1 44. On October 10, 2016, AE Wealth's Chief Compliance Officer at that time, "C.C.",
2 signed a document titled "William 'Andy' Smith Fact Sheet."

3 45. Next to the category for "Liens," the Fact Sheet stated, "None known of at this time."
4 That statement was incorrect because Smith was then the subject of the 2013, 2015 and 2016 I.R.S.
5 Liens, and AE Wealth's background check report showed the 2013 and 2015 I.R.S. Liens against
6 Smith totaling \$129,845.

7 46. The Fact Sheet stated it was "Reviewed and Approved by ["J.H."] and [C.C.] on 10-
8 10-18." J.H. was AE Wealth's Chief Operating Officer and, as alleged above, C.C. was then AE
9 Wealth's Chief Compliance Officer.

10 47. On November 8, 2016, AE Wealth and Smith & Cox entered an Independent RIA Co-
11 Advisory Agreement ("Co-Advisory Agreement") under which the two firms agreed to provide AE
12 Wealth's asset management and financial planning services to Smith & Cox's clients.

13 48. The Co-Advisory Agreement gave AE Wealth "discretionary authority, pursuant to
14 the terms set forth in the client agreement, to buy and sell securities on behalf of any client of [Smith
15 & Cox] who participates in AEWM's asset management services without the prior consent of the
16 client."

17 49. The Co-Advisory Agreement provided: "At all times while acting in the capacity of
18 a properly registered investment advisor, [Smith & Cox] will act in a manner consistent with its
19 contractual and fiduciary responsibilities.... [Smith & Cox will] not make untrue statements or
20 misrepresentations, or omit any material facts, concerning Services to be offered or provided."

21 50. The Co-Advisory Agreement required Smith & Cox and Andy Smith to comply with
22 all the "fiduciary and ethical conduct requirements of the SEC and the various states in which [Smith
23 & Cox and Andy Smith] conduct business," which included Arizona.

24 51. Section 4(f) of the Co-Advisory Agreement required Smith & Cox to "immediately
25 in writing" inform AE Wealth if Smith & Cox or Andy Smith became the subject of any investigation
26 by any state government agency, were put on notice of any violation or other legal action concerning

1 Smith & Cox or Andy Smith, became aware that their licenses to act as an investment adviser or
2 investment adviser representative might be revoked, became subject to a federal tax lien, or became
3 involved in any other material event that might be a required disclosure on Smith & Cox's Form
4 ADV or Andy Smith's Form U4.

5 52. Section 4(q) provided that Smith & Cox's "strict compliance with the terms and
6 provisions of this Agreement is a condition to [Smith & Cox's] continued engagement with
7 AEW...."

8 53. The Co-Advisory Agreement enabled AE Wealth to terminate Smith & Cox's
9 affiliation with it upon ten days' written notice if Smith & Cox materially breached AE Wealth's
10 written policies and procedures or Smith & Cox's obligations under the Co-Advisory Agreement.

11 **E. January 2017 to May 2020: AE Wealth and Smith & Cox Serve as Co-**
12 **Fiduciaries for Their Joint Investment Advisory Clients.**

13 54. In January 2017, AE Wealth and Smith & Cox began executing AE Wealth Managed
14 Account Co-Advisory Client Agreements ("Co-Advisory Client Agreements") with investors to
15 provide investment advisory services.

16 55. Under the Co-Advisory Client Agreements, the investor-clients opened a
17 discretionary advisory account (the "Account") with AE Wealth, and appointed AE Wealth and
18 Smith & Cox as the co-investment advisers of record on the Account.

19 56. The Co-Advisory Client Agreements further provided: "Investment advisory fees of
20 AEW and [Smith & Cox] are charged based on a percentage of assets under management, billed
21 in arrears (at the end of the billing period) on a monthly basis.... The investment advisory fees will
22 be deducted from the Account and paid directly to AEW."

23 57. In February 2017, AE Wealth and Smith & Cox began receiving the investment
24 advisory fees paid by the clients pursuant to the Co-Advisory Client Agreements.

1 58. Between February 1, 2017, and May 13, 2020, under the Co-Advisory Client
2 Agreements, 201 clients (households) consisting of 407 accounts paid investment advisory fees to
3 AE Wealth totaling \$789,322.86. AE Wealth then paid a portion of those fees to Smith & Cox.

4 59. On May 4, 2020, AE Wealth terminated the Co-Advisory Agreement between itself
5 and Smith & Cox.

6 60. As co-investment advisers and an investment advisor representative, AE Wealth,
7 Smith & Cox and Andy Smith were fiduciaries of their clients, and owed them “an affirmative duty
8 of utmost good faith, and full and fair disclosure of all material facts....” *Capital Gains Research*,
9 375 U.S. at 194.

10 **F. The 2018 Enforcement Action for Securities Fraud and Investment Advisory**
11 **Fraud, and to Revoke Smith’s and Smith & Cox’s Licenses.**

12 61. On March 30, 2018, the Division filed an enforcement action against Andy Smith,
13 Chris Cox and Smith & Cox (the “2018 Enforcement Action”).

14 62. The 2018 Enforcement Action alleged that Andy Smith and Smith & Cox committed
15 securities fraud and investment advisory fraud in violation of A.R.S. §§ 44-1991 and 44-3241 by
16 failing to disclose to investors the I.R.S.’s 2013 Lien against Smith and by selling U.S. military
17 veterans’ retirement and disability benefits payments to investors despite federal statutes prohibiting
18 assignments of veterans’ retirement and disability payments.

19 63. The 2018 Enforcement Action alleged that Chris Cox should be held liable as a
20 controlling person of Smith & Cox for its securities fraud in violation of A.R.S. § 44-1991.

21 64. The 2018 Enforcement Action requested that the Commission revoke Smith & Cox’s
22 and Andy Smith’s licenses as an investment adviser and investment adviser representative, respectively.

23 65. On April 6, 2018, Smith & Cox was served with the Notice of Opportunity for
24 Hearing in the 2018 Enforcement Action. On April 13, 2018, Andy Smith, Chris Cox and Smith &
25 Cox filed a request for a hearing.
26

1 66. Section 4(f) of the Co-Advisory Agreement required Smith & Cox to “immediately
2 in writing” inform AE Wealth of the 2018 Enforcement Action in April 2018 when Smith & Cox
3 became aware of it. Smith & Cox did not do so.

4 67. Section 4(f) of the Co-Advisory Agreement also required Smith & Cox to
5 immediately inform AE Wealth of the 2016 and 2017 I.R.S. Liens against Smith. Smith & Cox did
6 not do so.

7 68. Smith & Cox materially breached the Co-Advisory Agreement by failing to
8 immediately inform AE Wealth of the 2018 Enforcement Action.

9 69. Smith & Cox also materially breached the Co-Advisory Agreement by failing to
10 immediately inform AE Wealth of the 2016 and 2017 I.R.S. Liens against Smith.

11 70. The 2018 Enforcement Action proceeded to hearing in June 2019. Andy Smith, Chris
12 Cox and Smith & Cox appeared, defended and were represented by their attorney, Mark Chester.
13 The hearing concluded on June 27, 2019.

14 71. The 2018 Enforcement Action remained pending throughout 2019 and the first nine
15 months of 2020 while the parties submitted post-hearing briefs and the Hearing Division prepared a
16 Recommended Order and Opinion, which it did on September 8, 2020.

17 72. Beginning when the 2018 Enforcement Action was filed on March 30, 2018, its
18 existence was a material fact that Respondents had an affirmative duty to disclose to the clients they
19 served as co-investment advisors.

20 73. In addition, Respondents had an affirmative duty to disclose to their investment
21 advisory clients (i) the 2006 Unpaid Judgment against Smith, and (ii) the 2013, 2016 and 2017 I.R.S.
22 Liens against Smith, which were all material facts.

23 74. Respondents did not disclose the existence of the 2018 Enforcement Action, the 2006
24 Unpaid Judgment, or the 2013, 2016 and 2017 I.R.S. Liens to their investment advisory clients.
25
26

1 **G. Knowing Andy Smith and Smith & Cox May Lose Their Investment Advisory**
2 **Licenses, Andy Smith and Chris Cox Recruit Nate Barnhart and Plan To “Re-**
3 **Brand” from Smith & Cox, LLC to Cornerstone Wealth Management, LLC.**

4 75. In the fall of 2018, Smith met with Barnhart, whom Smith knew socially, about
5 Barnhart potentially joining Smith & Cox. Smith said his firm was looking to expand and bring on
6 someone like Barnhart to help service the firm’s clients. Smith said that over time, Barnhart would
7 have an ownership interest in the firm. Smith said the firm would rebrand under the name
8 Cornerstone Wealth Management rather than add additional owners’ names to the firm name of
9 Smith & Cox.

10 76. Smith told Barnhart that he (Smith) might have to give up his investment advisory
11 license as a result of an investment he previously sold and for which he was being investigated.
12 Smith told Barnhart there was a pending action and Smith was defending himself, but he might have
13 to give up his license.

14 77. Smith told Barnhart the plan was for Barnhart to be the new investment adviser
15 representative for Cornerstone and for Smith to have some other role that did not involve advising
16 clients.

17 78. Smith talked in general terms about a compensation package for Barnhart, which
18 would include a base salary, a bonus, and ownership in Cornerstone down the road. Smith also
19 mentioned that he may move back to Indiana in the future but would retain his share of ownership
20 and control over Cornerstone. Barnhart was interested in Smith’s proposal and they agreed to meet
21 again in 2019 after the 2018 Holidays.

22 79. In early 2019 Barnhart and Smith had another meeting. Barnhart asked Smith to
23 explain the investment that was the subject of the pending action. Smith told Barnhart the investment
24 involved pensions from military veterans. Smith assured Barnhart the matter would have no negative
25 impact on him if he joined Smith’s firm. Barnhart did not inquire further about the 2018 Enforcement
26 Action.

1 80. On April 10, 2019, Barnhart authorized AE Wealth to conduct a background check
2 on him in connection with his potential affiliation with AE Wealth as an investment adviser
3 representative.

4 81. On April 17, 2019, Chris Cox reserved the name "Cornerstone Wealth Management."

5 82. In June 2019, Barnhart met with Smith and Cox to further discuss joining their firm.
6 Smith and Cox made clear to Barnhart that the firm was rebranding to Cornerstone.

7 83. Smith and Cox also discussed that Smith's clients would be transferred to Barnhart,
8 and Barnhart would become the investment adviser representative for the firm.

9 84. Barnhart agreed that he would join the firm.

10 85. Although Smith, Cox and Barnhart had discussed that Barnhart would become an
11 owner of Cornerstone over time, Barnhart agreed to and did organize Cornerstone on July 3, 2019,
12 as a member-managed limited liability company with himself as the sole member.

13 86. On September 16, 2019, Barnhart signed an AE Wealth Investment Adviser
14 Representative Agreement. Under the Investment Adviser Representative Agreement, AE Wealth
15 engaged Barnhart as an IAR and Cornerstone was deemed a "branch office" of AE Wealth.

16 87. On September 19, 2019, Barnhart and AE Wealth filed with the Division a Form U4
17 uniform application for Barnhart to become an Arizona-licensed investment adviser representative
18 of AE Wealth. On October 11, 2019, the Division approved Barnhart's application and he became
19 licensed as an IAR through AE Wealth.

20 **H. September-October 2019: AE Wealth Learns of the 2018 Enforcement Action.**

21 88. On September 20, 2019, AE Wealth's Chief Compliance Officer at that time, "K.S.",
22 and its General Counsel, "D.W.", had a conference call with Andy Smith, Chris Cox, attorney Mark
23 Chester, and Nate Barnhart. According to a statement K.S. provided to the Division, this call was
24 when AE Wealth first learned of the 2018 Enforcement Action against Smith, Cox and Smith & Cox.
25 According to K.S., Smith, Cox and Attorney Chester provided general information about the 2018
26 Enforcement Action.

1 89. On September 28, 2019, Attorney Chester emailed K.S. a copy of the Notice of
2 Opportunity for Hearing (“Notice”) in the 2018 Enforcement Action. The Notice alleged: (i) the
3 existence of the 2013, 2016 and 2017 I.R.S. Liens against Smith; and (ii) Smith and Smith & Cox
4 committed securities fraud and investment advisory fraud. As stated above, the Notice requested the
5 Commission to revoke Smith’s and Smith & Cox’s investment advisory licenses.

6 90. Thus, as of September 28, 2019, AE Wealth knew that Smith & Cox had withheld
7 and failed to disclose material information that Section 4(f) of the Co-Advisory Agreement required
8 it to “immediately in writing” disclose to AE Wealth, namely: (i) Smith & Cox and Smith were the
9 subject of an investigation and an enforcement action by a state government agency concerning
10 alleged violations of the securities laws; (ii) Smith’s and Smith & Cox’s investment advisory licenses
11 might be revoked; and (iii) Smith was the subject of three federal tax liens.

12 91. AE Wealth decided it would terminate its Co-Advisory relationship with Smith &
13 Cox, but not for several months so that Nate Barnhart could take over Smith & Cox’s book of
14 approximately 193 clients. Transitioning the clients from Andy Smith to Nate Barnhart as their
15 investment adviser representative would enable AE Wealth to keep those clients, whose assets under
16 management totaled at least \$25 million.

17 92. Just as Smith & Cox had withheld and failed to disclose to AE Wealth the I.R.S. Liens
18 and the 2018 Enforcement Action, AE Wealth did not disclose these facts to its joint clients with
19 Smith & Cox.

20 93. On October 23, 2019, Callanan and K.S. had a conference call with Smith, Cox and
21 Barnhart regarding transitioning the clients from Smith to Barnhart as their IAR. The call
22 participants agreed that Smith’s and Barnhart’s meetings with the clients for the transition were to
23 be completed by February 29, 2020. (AE Wealth subsequently extended that deadline because Smith
24 and Barnhart did not meet it. AE Wealth extended the February 29th deadline to April 15th, then to
25 May 1st, and then to September 1, 2020.).
26

1 94. According to a confirming email K.S. sent after the October 23rd conference call, AE
2 Wealth imposed the following restrictions and requirements that were to be effective as of March 1,
3 2020:

- 4 a) “Andy Smith will not be involved in the securities side of the business at all.”
5 b) “Andy will take on a non-sales role and his title will reflect such.”
6 c) “Andy will have no front office or client interaction with securities clients.”
7 d) “As is natural, clients may reach out to Andy to ask questions based on their
8 historical relationship. When/if this happens, Andy will refer the client to Nate for advice
9 and servicing. No product discussion will occur.”
10 e) “Andy will not participate in securities’ client meetings after 02.29.2020.”
11 f) “Andy may be present at company functions where all members of the staff
12 are invited. Ex: barbeques, holiday parties etc. If he is present however, he will not engage
13 in any sales or securities product related conversations. He should not even be present in
14 a conversation where others are discussing securities products, particularly if client *[sic]*
15 or potential clients are present.”

16 95. In order to avoid clients asking questions about Smith’s new non-securities role, K.S.
17 wrote that AE Wealth requested that “Andy not be present at any seminars, presentation etc. Even
18 if Andy is not presenting and not meeting with clients, his presence at the event will prompt questions
19 regarding his role so it is in his best interest to not be there.” K.S. continued, “Compliance may be
20 present at client events, seminars, presentations.”

21 96. While AE Wealth imposed these requirements on Smith, Cox and Barnhart, it did not
22 require them to disclose to their joint investment advisory clients (i) the three I.R.S. Liens against
23 Smith, (ii) the 2018 Enforcement Action against Smith, Cox and Smith & Cox, or (iii) that Smith
24 and Smith & Cox might have their investment advisory licenses revoked.
25
26

I. **Late 2019 through September 2020: Respondents Deceive Their Clients Through the Pretense of “Rebranding” Smith & Cox to Cornerstone While Failing to Disclose Numerous Negative Material Facts.**

97. Barnhart attended the 2019 Smith & Cox client holiday party where Barnhart was formally introduced to clients. Clients were told that Smith & Cox was “rebranding” and would be known as Cornerstone.

98. In early 2020, Barnhart and Smith began meeting with clients to transition them from Smith to Barnhart as their investment adviser representative.

99. AE Wealth agreed that Smith and Barnhart could tell the clients that Barnhart was becoming their IAR because Smith was transitioning to a new role within the firm. AE Wealth did not tell Smith or Barnhart to inform clients that AE Wealth had directed that Smith “not be involved in the securities side of the business at all,” or that AE Wealth was severing its relationship with Smith.

100. Consistent with their agreement with AE Wealth, Smith and Barnhart told the clients that Barnhart would become their IAR because Smith was taking on a non-IAR role within Cornerstone.

101. Clients were also told: “As you know, Smith & Cox, LLC, has gone through the re-branding process, and we are now Cornerstone Wealth Management, LLC. Our company is growing and [that] is why we have added Nate Barnhart to our team, to help serve you even better. With that, we must change the registration on all our account *[sic]*.” These were misleading half-truths.

102. Neither Smith, nor Barnhart nor AE Wealth informed the clients of the real reasons for the “rebranding” and IAR transition to Barnhart, namely: (i) the pending 2018 Enforcement Action alleging securities fraud and investment advisory fraud, (ii) Smith’s 2013, 2016 and 2017 I.R.S. Liens; (iii) that Smith and Smith & Cox expected to have their investment advisory licenses revoked; and (iv) that AE Wealth had decided to terminate its Co-Advisory Agreement with Smith & Cox because Smith & Cox had withheld and concealed all this negative material information from AE Wealth.

1 103. Smith transitioned approximately 250 household investment advisory accounts to
2 Barnhart during the first half of 2020.

3 104. As part of the transition, Respondents had the clients sign AE Wealth Managed
4 Account Client Agreements that assigned Barnhart as the clients' IAR.

5 105. Between December 10, 2019, and September 1, 2020, under the Managed Account
6 Client Agreements, 221 clients (households) consisting of 445 accounts paid investment advisory
7 fees to AE Wealth totaling \$370,078.11. AE Wealth then paid a portion of those fees to Barnhart.

8 106. On Wednesday, April 29, 2020, the Division filed the original Temporary Order to
9 Cease and Desist and Notice of Opportunity for Hearing ("original Notice") in this action (the "2020
10 Enforcement Action").

11 107. On Thursday, April 30, 2020, the Division served AE Wealth with the original Notice
12 by delivering it to AE Wealth's statutory agent in Arizona.

13 108. On Monday, May 4, 2020, AE Wealth emailed a letter to Andy Smith terminating AE
14 Wealth's Co-Advisory Agreement with Smith & Cox.

15 109. AE Wealth had allowed Smith & Cox to continue to act as its co-investment adviser
16 to their joint clients for more than eight (8) months from September 2019 when AE Wealth learned
17 of the 2018 Enforcement Action and Smith's and Cox's dishonesty in failing to "immediately"
18 inform AE Wealth of it as their Co-Advisory Agreement required.

19 110. AE Wealth never told Barnhart to disclose to clients that he, Cornerstone and AE
20 Wealth were named as Respondents in the 2020 Enforcement Action. Neither AE Wealth, nor
21 Barnhart nor Cornerstone disclosed this fact to their clients.

22 111. On May 6, 2020, K.S. wrote in an internal AE Wealth email that the agenda for her
23 upcoming meeting on May 8th with Callanan should include: "Smith & Cox case – Nate Barnhart –
24 discuss separation after we get needed info from him."

25 112. Two weeks later, on May 20, 2020, K.S. informed Cox and Barnhart by phone that
26 AE Wealth was terminating Barnhart effective September 1, 2020. On May 21, 2020, K.S. sent Cox

1 and Barnhart an email confirming AE Wealth's decision to terminate Barnhart, writing, "AEWM
2 will file Nate's U5 on September 1, 2020 and move all clients assigned to Nate to retail accounts."
3 AE Wealth later extended Barnhart's termination date to September 30, 2020.

4 113. On September 30, 2020, AE Wealth terminated Barnhart.

5 114. Between May 20 and September 30, 2020, neither AE Wealth nor Barnhart informed
6 clients that Barnhart was leaving AE Wealth and the clients would need to find a new investment
7 adviser.

8 115. Instead, in October 2020, clients received a form letter from AE Wealth dated
9 September 30, 2020, stating in part:

10
11 We are writing to notify you Nate Barnhart (Cornerstone Wealth
12 Management LLC) is no longer an Investment Adviser Representative on
13 behalf of AE Wealth Management (RIA). Effective September 1, 2020, Mr.
Barnhart resigned as an Investment Adviser Representative (IAR) with AE
Wealth Management.

14 ...

15 With this change, your client agreement with AE Wealth Management will
16 no longer be valid.

17 ...

18 During this transition, please contact TD Ameritrade directly for assistance
19 with your accounts(s). You can reach their service helpline at 1-800-431-
[REDACTED].

20 As of 12/01/2020, if your account has not moved to a new investment
21 adviser, we will no longer be able to assist you and your account will be
22 changed to a TD Ameritrade retail account.... AE Wealth Management
cannot and will not take any direction, directly or indirectly from Mr.
Barnhart.

23 116. The letter was generically signed "AE Wealth Management, LLC Compliance."
24
25
26

J. AE Wealth's Gross Fees Received From Investors Under The Co-Advisory Client Agreements And Managed Account Client Agreements.

117. AE Wealth has submitted to the Securities Division a statement under oath that \$1,159,400.97 is the total amount of gross fees that AE Wealth received from 240 clients (households) consisting of 471 accounts under (i) the Co-Advisory Client Agreements with Smith & Cox, LLC and (ii) the Managed Account Client Agreements that assigned Barnhart as the investors' IAR. AE Wealth has also submitted to the Securities Division documentation supporting the \$1,159,400.97 figure for the 240 clients (households) consisting of 471 accounts.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and Investment Management Act.

2. AE Wealth, in connection with transactions within or from Arizona involving the provision of investment advisory services, directly or indirectly omitted to state material facts that were necessary in order to make other statements made not misleading in light of the circumstances under which they were made. Specifically, AE Wealth failed to disclose to its joint investment advisory clients with Smith & Cox and Barnhart:

- a. the 2006 Unpaid Judgment Smith owes an investor in Indiana;
- b. the 2013, 2016 and 2017 I.R.S. Liens against Smith for \$178,275 in unpaid taxes;
- c. the 2018 Enforcement Action for securities fraud, investment advisory fraud, and revocation of Smith's and Smith & Cox, LLC's licenses; and
- d. the 2020 Enforcement Action for investment advisory fraud and revocation of Barnhart's IAR license.

Further, to explain the transition from Smith to Barnhart as the clients' investment adviser representative, with AE Wealth's consent, Smith & Cox and Barnhart told their clients misleading half-truths such as "Our company is growing and [that] is why we have added Nate Barnhart to our team, to help serve you even better," while failing to disclose that AE Wealth had decided to

1 terminate its Co-Advisory Agreement with Smith & Cox because Smith & Cox had withheld and
2 concealed negative material information from AE Wealth, including the I.R.S. Liens against Smith
3 and the 2018 Enforcement Action.

4 This conduct violates A.R.S. § 44-3241(A)(2).

5 3. AE Wealth's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
6 3292.

7 4. AE Wealth's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
8 3292.

9 5. AE Wealth's conduct is grounds for administrative penalties under A.R.S. § 44-3296.

10 III.

11 ORDER

12 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and AE Wealth's
13 consent to the entry of this Order, attached and incorporated by reference, the Commission finds that
14 the following relief is appropriate, in the public interest, and necessary for the protection of investors:

15 IT IS ORDERED, pursuant to A.R.S. § 44-3292, that AE Wealth, and any of AE Wealth's
16 agents, employees, successors and assigns, permanently cease and desist from violating the
17 Investment Management Act.

18 IT IS FURTHER ORDERED that AE Wealth comply with the attached Consent to Entry of
19 Order.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3292, that AE Wealth shall pay
21 restitution in the principal amount of \$1,159,400.97 as a result of the conduct set forth in the Findings
22 of Fact and Conclusions of Law. Within fifteen (15) calendar days from the date of this Order, AE
23 Wealth shall pay the \$1,159,400.97 directly to the 240 clients (households) consisting of 471
24 accounts on a pro-rata basis based on the principal amount each investor is owed. AE Wealth shall
25 send each investor a cover letter and a complete copy of this Order together with the pro-rata
26 restitution payment for that investor. Pursuant to A.C.C. Rule 14-4-308(C)(4), AE Wealth shall

1 provide such verification and evidence of its restitution payments and accompanying cover letters to
2 the investors as the Securities Division may require. If AE Wealth does not make any payment when
3 due under the terms of this paragraph, or fails to provide such verification and evidence of its
4 payment(s) and accompanying cover letters as the Securities Division may require, any outstanding
5 balance of the \$1,159,400.97 restitution amount plus accrued interest shall be deemed in default and
6 be immediately due and payable to the Commission, which payment shall be made to the "State of
7 Arizona." Any principal amount outstanding shall accrue interest at the rate of ten percent per annum
8 from the date AE Wealth received the amount from the investor(s) until the date of this Order, subject
9 to any legal offsets, pursuant to A.A.C. R14-4-308(C).

10 IT IS FURTHER ORDERED that any unpaid restitution ordered in the preceding paragraph
11 will accrue interest, as of the date of the Order, at the rate of the lesser of (i) ten percent per annum
12 or (ii) at a rate per annum that is equal to one per cent plus the prime rate as published by the board
13 of governors of the federal reserve system in statistical release H. 15 or any publication that may
14 supersede it on the date that the judgment is entered.

15 IT IS FURTHER ORDERED that AE Wealth shall promptly notify the Securities Division
16 of any restitution funds that AE Wealth cannot disburse because an investor refuses to accept such
17 payment, or any restitution funds that cannot be disbursed to an investor because the investor is
18 deceased. Any such restitution funds shall be disbursed on a pro-rata basis to the remaining investors.

19 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3296, that AE Wealth shall pay an
20 administrative penalty in the amount of \$150,000.00 as a result of the conduct set forth in the Findings
21 of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be
22 made to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law.

23 For purposes of this Order, a bankruptcy filing by AE Wealth shall be an act of default. If
24 AE Wealth does not comply with this Order, any outstanding balance may be deemed in default and
25 shall be immediately due and payable.

1 IT IS FURTHER ORDERED, that if AE Wealth fails to comply with this order, the
2 Commission may bring further legal proceedings against AE Wealth, including application to the
3 superior court for an order of contempt.

4 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this
5 Order shall be deemed binding against any Respondent under this Docket Number who has not
6 consented to the entry of this Order.

7 IT IS FURTHER ORDERED that David James Callanan is dismissed with prejudice from
8 this action.

9 IT IS FURTHER ORDERED removing AE Wealth and David James Callanan from the
10 Service List for future filings in this Docket Number.

11 IT IS FURTHER ORDERED that this Order shall become effective immediately.

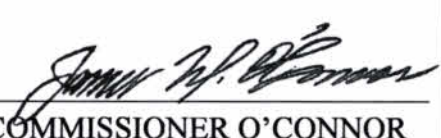
12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

13
14 
15 CHAIRWOMAN MÁRQUEZ PETERSON


COMMISSIONER KENNEDY

16
17 
18 COMMISSIONER OLSON


COMMISSIONER TOVAR


COMMISSIONER O'CONNOR



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,
Executive Director of the Arizona Corporation Commission,
have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this 1 day of September, 2021.


MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

1 DISSENT

4 DISSENT

5 This document is available in alternative formats by contacting Carolyn D. Buck, ADA
6 Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov.

7 (JDB)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent AE Wealth Management, LLC (CRD # 282580) (“AE Wealth” or
3 “Respondent”) admits the jurisdiction of the Commission over the subject matter of this proceeding.
4 AE Wealth acknowledges that it has been fully advised of its right to a hearing to present evidence
5 and call witnesses and AE Wealth knowingly and voluntarily waives any and all rights to a hearing
6 before the Commission and all other rights otherwise available under Article 7 of the Investment
7 Management Act and Title 14 of the Arizona Administrative Code. AE Wealth acknowledges that
8 this Order To Cease And Desist, Order For Restitution, Order For Administrative Penalties And
9 Consent To Same (“Order”) constitutes a valid final order of the Commission.

10 2. AE Wealth knowingly and voluntarily waives any right under Article 8 of the
11 Investment Management Act to judicial review by any court by way of suit, appeal, or extraordinary
12 relief resulting from the entry of this Order.

13 3. AE Wealth acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. AE Wealth has been represented by an attorney in this matter, AE Wealth has
16 reviewed this order with its attorney, Alan Baskin, and understands all terms it contains.

17 5. AE Wealth admits only for purposes of this proceeding and any other proceeding in
18 which the Commission is a party the Findings of Fact and Conclusions of Law contained in this
19 Order.

20 6. AE Wealth further agrees that it shall not deny or contest the Findings of Fact and
21 Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or
22 (b) non-criminal proceeding in which the Commission is a party (collectively, “proceeding(s)”). AE
23 Wealth further agrees that in any such proceedings, the Findings of Fact and Conclusions of Law
24 contained in this Order may be taken as true and correct and that this Order shall collaterally estop
25 AE Wealth from re-litigating with the Commission or any other state agency, in any forum, the
26 accuracy of the Findings of Fact and Conclusions of Law contained in this Order. In the event AE

1 Wealth pursues bankruptcy protection in the future, it further agrees that in such bankruptcy
2 proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:

3 A. The obligations incurred as a result of this Order are a result of the conduct set forth
4 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona
5 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

6 B. This Order constitutes a judgment, order, consent order, or decree entered in a state
7 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by AE
8 Wealth pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty,
9 citation, restitution payment, disgorgement payment, attorney fee, cost or other payment owed by
10 AE Wealth pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

11 7. By consenting to the entry of this Order, AE Wealth agrees not to take any action or
12 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
13 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
14 basis.

15 8. While this Order settles this administrative matter between AE Wealth and the
16 Commission, AE Wealth understands that this Order does not preclude the Commission from
17 instituting other administrative or civil proceedings based on conduct not addressed by this Order.

18 9. AE Wealth understands that this Order does not preclude the Commission from
19 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
20 that may be related to the matters addressed by this Order.

21 10. AE Wealth understands that this Order does not preclude any other agency or officer
22 of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
23 proceedings that may be related to matters addressed by this Order.

24 11. AE Wealth agrees that it and all its officers and employees with relevant knowledge,
25 including but not limited to David James Callanan, will continue to cooperate with the Securities
26 Division including, but not limited to, by providing complete and accurate testimony at any hearing

in this matter and cooperating with the state of Arizona in any related investigation or any other matters arising from the activities described in this Order.

12. AE Wealth consents to the entry of this Order and agrees to be fully bound by its terms and conditions.

13. AE Wealth acknowledges and understands that if it fails to comply with the provisions of the Order and this consent, the Commission may bring further legal proceedings against AE Wealth, including application to the superior court for an order of contempt.

14. AE Wealth understands that default shall render it liable to the Commission for its costs of collection, including reasonable attorneys' fees and interest at the maximum legal rate.

15. AE Wealth agrees and understands that if it fails to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. AE Wealth agrees and understands that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

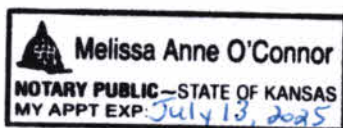
16. David James Callanan represents that he is the Chief Executive Officer of AE Wealth Management, LLC and has been authorized by it to enter into this Order for and on behalf of it.


AE Wealth Management, LLC

By 
Its: Chief Executive Officer

STATE OF KANSAS)
County of SHAWNEE) ss

SUBSCRIBED AND SWORN TO BEFORE me this 14 day of July, 2021.




NOTARY PUBLIC

My commission expires:
July 13, 2025

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